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LEGAL Action
OF WISCONSIN**40 Years of Justice**

TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

Assembly Committee on Housing

FROM: Bob Andersen 

RE: SB 204/AB 277 – relating to prohibiting discrimination in housing because of status as a victim of domestic abuse, sexual assault or stalking.

DATE: October 7, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. One of the three major priority areas for LAW is family law, and we have been extensively involved in issues regarding domestic violence and sexual assault, and a second major priority committee is housing.

Last session we collaborated with the Wisconsin Coalition Against Domestic Violence (WCADV) and the Wisconsin Coalition Against Sexual Assault in the successful enactment of the "Safe Housing Act," which allows victims of domestic violence or sexual assault to be relieved of their residential lease obligations, where they are in imminent danger if they remain living in their premises.

I. DISCRIMINATION AGAINST VICTIMS IS A PERVASIVE PROBLEM

LAW and WCADV have long sought to promote legislation that would protect victims of domestic violence from discrimination in housing. We decided to set that legislation aside in the past, due to our focus on the "Safe Housing Act" legislation. *There is no doubt, however, that discrimination in housing against victims of domestic violence or sexual assault is one of the greatest problems that has faced this population over the years. Reluctance of landlords to rent to victims of domestic violence segregates victims and their children into limited places to live which are often substandard housing. Victims and their children often go homeless while they try to find a place that will take them.*

Landlords are often reluctant to rent to victims, because landlords want to avoid any potential

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disturbances. This occurs based only the belief by landlords that there is a potential for disturbances – the victim is essentially stigmatized by her past – there may in fact not be any current problems facing the victim. None of this is attributable to the fault of the victim .

With the great increase in the use of CCAP by landlords over the past few years to screen out prospective tenants, discrimination against victims has increased. According to the Office of the Director of State Courts, there are 1,000,000 hits per day on CCAP, and the use of the system by employers and landlords has expanded enormously. Recently, CCAP has modified its procedures to remove the names of petitioners in domestic violence cases. The modification is recent and there are questions about its implementation statewide. In any event, landlords find out about domestic abuse status through other avenues, including rent applications which list shelters as the current address of victims.

In the trainings we have conducted on the new “Safe Housing Act,” we have been constantly asked whether the new act will do anything about discrimination, and sadly, we have had to say that the new law does not address that problem.

II. CURRENT LAW ALREADY INDIRECTLY AND PARTIALLY PROHIBITS DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

Wisconsin has already enacted a law, which indirectly and partially prohibits discrimination by landlords against victims of domestic violence. Section 106.50 (5m)(d) contains the following provision:

(d) Nothing in this section requires that housing be made available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. A claim that an individual's tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior by the individual that caused harm or damage, that directly threatened harm or damage, or that caused a reasonable fear of harm or damage to other tenants, persons employed on the property, or the property. *No claim that an individual's tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the fact that a tenant has been or may be the victim of domestic abuse, as defined in s. 813.12 (1)(am).* [emphasis added]

Interestingly enough, while this section of the statutes provides a qualification to the prohibition against discrimination found in s. 106.50, by allowing discrimination where safety is concerned, it *prohibits discrimination against a victim of domestic abuse on grounds that safety would be threatened. So, even though status as a victim of domestic violence is not among the list of protected classes under s. 106.50, this provision in the subsequent section 106.50(5m) does indirectly prohibit discrimination. But, this prohibition applies only to “threats” and not to other reasons for discrimination – like potential noise or other disturbances.*

III. THE LAW SHOULD DIRECTLY PROHIBIT DISCRIMINATION AND SHOULD APPLY TO ANY REASON FOR DISCRIMINATION

Because the statement in s. 106.50 (5m)(d) is only indirect and because discrimination based on the status of victims is not expressly included in the protected classes identified by the statutes, the law should be amended to cover any other reasons for discrimination besides threats of violence. *Otherwise, landlords are free to discriminate for any reason at all – so long as it does not relate to potential threats.* They may dislike victims or they may believe that renting to victims will only be a nuisance.

What the bill does is to provide an express provision to be added to the protected classes.

Current s. 106.50 (1) lists the protected classes [highlighted below], as follows:

(1) Intent. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of *sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry* and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011. The legislature hereby extends the state law governing equal housing opportunities to cover single-family residences which are owner-occupied. The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

IV. AMENDMENT OF FAIR HOUSING ACT PROPOSED BY THE BILL

The bill amends the fair housing act by adding to the list of protected classes the following: *“status as a victim of domestic abuse, sexual assault, or stalking.”*

In s. 106.50 (1m)(u), a new paragraph is added which defines these terms:

(u) “status as a victim of domestic violence, sexual assault, or stalking” means the status of a person who is seeking to rent or purchase housing or a member or a prospective member of the person’s household having been, or being believed by the lessor or seller of housing to be, a victim of domestic abuse, as defined in s. 813.12 (1)(am), sexual assault under ss. 940.225, 948.02, and 948.025 or stalking under s.940.32.

V. OTHER STATE & FEDERAL LAWS:

At least the states of Rhode Island, Washington, and North Carolina have enacted legislation that protects victims of domestic violence from evictions or other forms of discrimination by landlords. Other states provide a defense against eviction to victims of domestic violence – Colorado, New Mexico. *Federal law (Violence Against Women Act) prohibits discrimination against victims of domestic violence in public housing and in federally assisted housing.*

Case law has also held that discrimination based on status as a victim of domestic violence is discrimination based on sex, in violation of federal and state housing acts. The basis is the *disparate impact theory*, on grounds that the vast majority of victims of domestic violence are women. The reasoning is that discrimination based on domestic abuse status is *in fact* discrimination against women. A federal district court in Vermont followed this reasoning and found that discrimination against victims of domestic violence *is* prohibited discrimination based on sex under the federal Fair Housing Act.

VI. ASSEMBLY AMENDMENT 1 TO ASSEMBLY BILL 277

This amendment is introduced to satisfy a concern that was raised by the Apartment Association of Southeast Wisconsin – the amendment makes it clear that the bill does not prohibit landlords from evicting victims for violations of lease obligations or state laws, but that victims are protected from eviction where the violence was caused by someone who was (1) not invited by the victim **OR** (2) where the perpetrator was invited, but the victim has obtained a restraining order or has given the landlord a written statement that the perpetrator will not be invited again. Where a letter has been given to the landlord, the victim must not invite the perpetrator onto the premises again or the victim may be evicted. The burden is on the victim to prove either of these circumstances in a defense to eviction.

The Apartment Association of Southeast Wisconsin has indicated that it is satisfied that this takes care of their concern.

VII. IF THE PERPETRATOR IS A TENANT, THE PROVISION ADOPTED LAST SESSION BY THE SAFE HOUSING ACT ALLOWS THE LANDLORD TO EVICT THE TENANT ON AN EXPEDITED PROCESS

If the perpetrator is a tenant, the *Safe Housing Act* adopted last session allows the landlord the expedited eviction of the perpetrator on a 5 day notice. This means that the tenant can be evicted on a 5 day notice with no right to cure the violation, as is the case under current law in certain cases involving drugs or nuisance.

This applies where the tenant commits an act that causes another tenant or child of the tenant to face an imminent threat of serious physical harm if the tenant remains on the premises and the offending tenant is the named offender in a domestic abuse, child abuse, or sexual assault

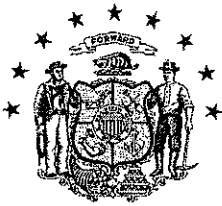
injunction, or the tenant has been named in a criminal complaint for sexual assault, stalking, or domestic abuse, or there is a no contact bail order in a criminal case.

VIII. THE EQUAL RIGHTS PROCESS ON A COMPLAINT INVOLVES AN EFFORT AT CONCILIATION BEFORE INJUNCTIVE RELIEF OR A FORFEITURE IS CONSIDERED

One landlord representative suggested to us that there should be some process for conciliation before a landlord is proceeded against for a violation. Actually, the Equal Rights Division process involves conciliation efforts if probable cause is found that there might be a violation of the Open Housing act. The conciliation is intended to resolve the dispute before any further action is to be taken.

IX. THE IMPORTANCE OF INCLUDING THIS PROTECTION IN THE OPEN HOUSING LAW IS AS MUCH ABOUT A LEGISLATIVE DECLARATION THAT THIS IS AN IMPORTANT PUBLIC POLICY, IF NOT MORE SO, THAN IT IS AS A MEANS OF ENFORCEMENT

It is important for the state to make a declaration that it is not good public policy to allow discrimination in housing based on status as a victim of domestic violence, sexual assault or stalking. Adequate housing is essential to the lives of victims and their families. So it is as important for the state to make this a declaration as it is for enforcement. The idea is not to punish landlords but to provide a directive about what is considered to be important public policy.



STATE REPRESENTATIVE
JOSEPH PARISI

WISCONSIN STATE ASSEMBLY

48th DISTRICT

**TO: ASSEMBLY COMMITTEE ON HOUSING AND SENATE COMMITTEE ON
JUDICIARY, CORRECTIONS, INSURANCE, CAMPAIGN FINANCE REFORM, AND
HOUSING**

FROM: REPRESENTATIVE JOE PARISI

RE: ~~AB 277~~ AND SB 204- THE "VICTIM FAIR HOUSING ACT"

DATE: OCTOBER 7, 2009

Chairman Young and Chairwoman Taylor, thank you for holding a hearing on the "Victim Fair Housing Act." I am very pleased to work on this bill with Senator Coggs in order to help address one of the most importance obstacles to safety faced by victims of domestic violence: access to safe and affordable housing.

AB 277 and SB 204 prohibit housing discrimination against victims of domestic violence, sexual assault, and stalking. This bill will help protect victims from discrimination both when they try to find housing and from being evicted from their residence.

I would like to focus my testimony on what this bill means to the more than 25,000 women who are abused by an intimate partner every year in Wisconsin. Escaping the cycle of violence is simultaneously one of the bravest and most dangerous decisions that a victim can make. A victim's decision to leave an abuser is not an easy one. If she stays, she may have economic security and a roof over her head but risks continued physical danger to herself and her children. If she leaves, she could loose her only means of financial support and, in many cases, become homeless. Victim advocates across the state consistently report housing discrimination against victims as one of the gravest challenges facing those who leave their abuser.

It is precisely when a victim decides to leave an abuser that our communities must ensure that she and her children have the opportunity to achieve safe housing. Unfortunately, this is not the case for many victims. Many landlords use the on-line Circuit Court Access Program to learn whether housing applicants have filed a restraining order to protect them from a perpetrator. Some landlords refuse to rent to victims of domestic violence because they are fearful of police involvement in future incidents that could occur on their property and the possible reputation that their property is a problem. The end result for victims and their children is that they are often relegated to substandard housing or become homeless for long periods of time because they cannot find landlords who are willing to rent to them. This stigma that renting to survivors will cause disturbances can even follow survivors who are not currently facing problems from an abuser, which can essentially lead to lifelong difficulties in finding housing.



STATE REPRESENTATIVE
JOSEPH PARISI

WISCONSIN STATE ASSEMBLY

48th DISTRICT

National data further illustrates the strong link between domestic violence and the inability of victims to find housing. The 2005 Hunger and Homelessness Survey by the United States Conference of Mayors concluded that half of the surveyed U.S. cities reported that domestic violence is a primary cause of homelessness. In addition, Congressional studies have found that 92% of homeless women had experienced severe physical or sexual abuse in their lifetimes.

Other states and the federal government have taken important steps to combat housing discrimination against victims of sensitive crimes. At least three states (Rhode Island, North Carolina, and Washington) have enacted legislation that protects victims from housing discrimination. In addition, federal law prohibits discrimination against victims of domestic violence in public housing and in federally assisted housing. It is time for Wisconsin to add its name to this list.

AB 277 and SB 204 simply build upon existing Wisconsin law that currently prohibits discrimination in housing on the basis of certain protected classifications, such as race, color, sex, sexual orientation, religion or age by adding victims of domestic violent, sexual assault and stalking to the list of protected classifications. The Victim Fair Housing Act recognizes that victims face significant hurdles to achieving safe and decent housing and that the state has an obligation to help ensure that victims and their families can achieve lives free of violence.

Sen. Coggs and I have also introduced an amendment to address a concern that was raised by some landlords. The amendment makes it clear that the bill does not prohibit landlords from evicting victims, but that victims are protected from eviction where the violence was caused by someone who was not invited by the victim or where the perpetrator was invited, but the victim has obtained a restraining order or has given the landlord a written statement that the perpetrator will not be invited again. In addition, 2007 Wisconsin Act 184, authored by Senator Coggs and Representative Suder, further protects the interests of landlords and other tenants by allowing landlords to evict perpetrators on five days notice if the perpetrator is a tenant.

More than 35 local programs that provide supportive services to victims of domestic violence and sexual assault, the Wisconsin Coalition Against Domestic Violence, the Wisconsin Coalition Against Sexual Assault, Legal Action Wisconsin, and UNIDOS Against Domestic Violence have all endorsed the Victim Fair Housing Act. I ask that you please join these groups in supporting this important legislation.

Testimony



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To: Members of the Senate and Assembly Committees on Housing
From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence
Date: October 7, 2009
Re: ~~Assembly Bill 277~~/Senate Bill 204 – the Victim Fair Housing Act

Chairpersons Taylor and Young and Members of the Committees, thank you for the opportunity to provide testimony on the Victim Fair Housing Act. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV wholeheartedly thanks Representative Parisi and Senator Coggs for their leadership to ensure that victims of domestic violence do not face unnecessary obstacles when attempting to obtain a safe home.

WCADV represents over 60 local programs that serve victims in all of Wisconsin's 72 counties and 11 tribes. One of the most important services our local programs provide is housing assistance. For many victims, the difference between a life of ever escalating violence and an independent, safe and healthy life is the ability to live securely away from the abuser. Programs work with victims to secure immediate temporary shelter in crisis situations and then assist victims in transitioning to a more permanent home.

This process is often not easy for victims. Aside from facing legal issues and possible emotional trauma, many victims have to confront the financial hardship of relocating. In addition to these barriers, our programs have reported that many victims are encountering another difficulty when trying to escape abusers—housing discrimination. This type of discrimination can occur when it is discovered that a rental applicant is a victim, either because a CCAP search reveals the applicant has petitioned for a restraining order or the applicant provides a domestic violence shelter as her current residence. Based simply on the information that the rental applicant has been a victim of domestic abuse, the victim is denied housing.

Research and studies confirm the existence of housing discrimination directed at victims.

- In 2008, the District of Columbia Equal Rights Center found that 65% of applicants who presented with a history of domestic violence "were either denied housing or offered less advantageous terms and conditions than an applicant not associated with domestic violence."¹
- A similar study in the New York City metropolitan area found that, "27.5% of [landlords or property managers] either flatly refused to rent to, or failed to follow up as promised," with rental applicants who identified as victims of domestic violence.² The study also found that, "[i]n...another 20% of cases, housing providers voiced stereotypical concerns with questions and comments such as...[questioning] the potential renter's mental stability..."³
- In addition, a survey by the National Network to End Domestic Violence found similar evidence of housing discrimination against domestic violence victims. Agencies that work with victims of domestic violence reported that about twenty-eight percent (346) of the total housing denials (1,251) recorded by the agencies

¹ Equal Rights Center, *No Vacancy: Housing Discrimination Against Survivors of Domestic Violence* in the District of Columbia, April 2008. This study used a "paired tester" methodology, in which one individual with a disclosed connection to domestic violence inquires about a housing vacancy. Shortly after, a second tester with no connection to domestic violence inquires about the same unit.

² Anti-Discrimination Center of Metro-New York, *Adding Insult to Injury: Housing Discrimination and Survivors of Domestic Violence*, August 2005.

³ *Id.*

were directly attributable to the individual's status as a victim of domestic violence.⁴

In many cases, the assumption being made is that the victim is to blame for the abusive incident, and therefore, the victim is not a desirable tenant. Victims should not be penalized for the acts of abusers, especially when the victim is trying to find a new home.

WCADV has listened to landlords and supports an amendment to address their concerns.

Victims are also unfairly penalized when they are evicted from their homes for disturbances caused by the perpetrator. WCADV and our local programs have worked with landlord groups to address this problem. Landlords have pointed out that they are sometimes faced with repeat domestic disturbances that warrant action. WCADV has collaborated with landlord groups to address this issue in ways that do not penalize victims.

First, last session WCADV worked to pass a law that allows landlords to evict abusers on an expedited basis. This legislation is a powerful tool that enables landlords to protect their interests, while not blaming victims.

Second, WCADV has worked with Rep. Parisi and Sen. Coggs to craft an amendment to the Victim Fair Housing Act, which clarifies that it is not discriminatory to evict victims when landlords have a legal basis for doing so. The amendment provides narrow exceptions to protect victims from being penalized for the acts of the perpetrator. Under the amendment, if the abuser was not invited to the residence by the victim, the victim may not be evicted. In this situation, the abuser committed at least two crimes, domestic abuse and trespass. The victim should certainly not be responsible for the criminal behavior. If, on the other hand, the abuser was an invited guest, the victim has the responsibility to discourage the abuser's presence on the property. Therefore, in order to invoke the eviction defense, the victim must either seek a restraining order enjoining the perpetrator from the property or provide a written statement that the offender will not be re-invited to the property. The amendment and its commonsense eviction defenses balance the interests of landlords with the need to ensure that victims of abuse are not re-victimized and blamed for conduct over which they had no control.

Housing discrimination is unjust and results in great costs to victims, governments and society.

When a victim is discriminated against, she is more likely to face homelessness or the prospect of staying with an abuser. Discriminatorily limiting victims' housing options contributes to catastrophic results.

Every year since 1999, the United States Conference of Mayors releases a report on Hunger and Homelessness. Consistently, the reports find that domestic violence is a leading cause of homelessness in American cities. For example, the 2008 report found that approximately fifteen percent of homeless individuals in the reporting cities were victims of domestic violence. Other studies have found an even stronger link between homelessness and domestic violence. A comprehensive survey of Minnesota's homeless population revealed that thirty-two percent of the homeless women in that state were made homeless, at least in part, because of intimate partner violence.

Additionally, we know continuing abuse has an enormous cost, in terms of lives and dollars. From 2006-2008, there were 101 domestic violence homicides in Wisconsin. Preliminary indications are that domestic homicides have increased significantly in 2009. Domestic violence costs the state millions of dollars a year in court and law enforcement expenditures and amounts to untold costs on the lives of abused adults and children.

WCADV does not believe many landlords would consciously cause victims to suffer; however, regardless of motive or intent, the personal and social costs of housing discrimination are too high to let it continue. In essence, the Victim Fair Housing Act is both a public safety and civil rights measure. In order to reduce violence and homelessness in the state, Wisconsin should remove discrimination as a barrier to victims' safety. As a matter of personal dignity and of justice, Wisconsin should affirm that victims deserve equal access to housing, and that victims should not be re-victimized because of stereotypes and prejudice. Therefore, I urge you to support the Victim Fair Housing Act. Thank you.

⁴ *Id.*



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Testimony

To: Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing, and the Assembly Committee on
Housing
From: Wisconsin Coalition Against Sexual Assault (WCASA)
Date: October 7, 2009
Re: ~~AB 277~~ SB 204 – Fair Housing Act Amendment Regarding Victims of Domestic
Abuse, Sexual Assault and Stalking
Position: Support

Thank you for your time this morning. My name is John Keckhaver, and I represent the Wisconsin Coalition Against Sexual Assault (WCASA). WCASA is a statewide organization that was created in 1985 to support and complement the work of Wisconsin's community-based sexual assault service provider programs and other organizations working to end sexual violence. Our mission is to help create the social change necessary to end sexual violence in Wisconsin.

AB 277 / SB 204 would prohibit discrimination in housing on the basis of a person's status as a victim of domestic abuse, sexual assault, or stalking. The bill also prohibits an owner of housing from requiring that a person seeking to buy or rent housing supply information concerning the person's status as a victim of domestic abuse, sexual assault, or stalking.

We support the proposal before you because it accomplishes three very important things:

- 1. It responds to a real and significant need – that is to ensure that victims of domestic abuse, sexual assault or stalking no longer face housing discrimination because of that status.**

Housing discrimination against victims of domestic abuse and sexual assault is real. A number of studies around the country have shown that housing discrimination is a continuing problem for victims. One such study found that one out of every four homeless women was homeless because of the violence committed against her.ⁱ Others have found that between 22 percent and 57 percent of homeless women report that domestic violence was the immediate cause of their homelessness.ⁱⁱ Another, a 2005 report by the U.S. Conference of Mayors found that 50 percent of the cities surveyed identified domestic violence as the primary cause of homelessness.ⁱⁱⁱ

2. The bill and Amendment 1 responsibly balance that need and the legitimate interests of landlords.

The proposal before you, as amended by Amendment 1, makes it clear that landlords may still evict victims when they have a legal basis for doing so. In other words, there may well be legitimate reasons for evicting a tenant who happens to be a victim of domestic abuse or sexual assault, and if there are, the landlord is not discriminating against that tenant by evicting them.

3. It offers clarity and certainty in an area of the law that now only indirectly protects victims of domestic violence or sexual assault from such discrimination.

Much discussion among advocates and legal experts has occurred regarding whether current law protects victims of domestic violence and sexual assault against housing discrimination. Federal and state laws may indirectly protect victims under what is called the "disparate impact theory."^{iv} It is clear, though, that victims of domestic violence, sexual assault and stalking are currently not *expressly* protected from housing discrimination. This bill would change that and bring certainty to the issue for landlords and tenants alike.

Victims of domestic violence and sexual assault do not cause their assaults. Despite this fact, they are often blamed. This bill can help take away one of the ways in which victims are later re-victimized – in housing matters – and we urge you to support it.

ⁱ U.S. Conference of Mayors/Sodexho Survey on Hunger and Homelessness, 2005.

ⁱⁱ Jana L. Jasinski et al., *The Experience of Violence in the Lives of Homeless Women: A Research Report 2*, 65 (2005).

ⁱⁱⁱ Wilder Research Center, *Homeless in Minnesota 2003*, 22 (2004); Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters 3* (2004); National Law Center on Homelessness and Poverty, National Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, (February, 2007)

^{iv} For a full discussion of the "disparate impact theory" and other related legal issues, see *Housing Discrimination Against Victims of Domestic Violence* by Wendy Weiser and Geoff Boehm, Clearinghouse Review, March-April 2002, accessed on 10/01/09 at <http://www.legalmomentum.org/assets/pdfs/housingdiscrimagainstdvvictims-clearinghouse.pdf>